IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 104 of 2001.

Judgement reserved on: 30.4.2007.

Date of decision: 29.5.2007.

Smt. Shyam Lata ….. Appellant.

Vs.

Subhash Chand …. Respondent.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr. K.D.Sood, Advocate.

For the Respondent : Mr. Romesh Verma, Advocate.

Kuldip Singh, Judge.

The respondent-wife is in appeal against the judgement, decree dated 28.3.2001, passed by the learned Additional District Judge (I), Kangra at Dharamshala in HMA No. 107/D/97, whereby the learned Additional District Judge has dissolved the marriage of the parties by a decree of divorce. For convenience, the parties are referred in the same manner as in the court below.

2. The facts in brief are that a divorce petition, under Section 13 of the Hindu Marriage Act, 1955 (for short, the Act), was filed by the petitioner- husband against the wife on the grounds of cruelty and desertion. It is the case of the husband that marriage between the parties took place on 8.12.1989 and thereafter they lived as husband and wife till April, 1991, but no child was born from the

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Whether the reporters of the local papers may be allowed to see the Judgment?

wedlock. The respondent-wife soon after the marriage started quarreling with the petitioner and his mother on the ground that she would not live in the joint family of the petitioner. On 7.4.1991, mother of the respondent, came to the house of the petitioner with respondent and started abusing the petitioner and his mother and asked them to provide separate residence to the respondent. Thereafter respondent started levelling false, baseless and motivated allegations against the character of the petitioner that he is having illicit relations with one Smt. Gurdas Kaur and he has solemnized marriage with her. She made a false complaints to the Deputy Commissioner, Kangra, under whom the petitioner is serving. On the basis of that complaint, inquiry was conducted by the Deputy Commissioner and the petitioner was asked vide letter, dated 30.7.1993, to submit that he has not contracted second marriage.

3. It is also the case of the petitioner that the respondent has kept a male child with her and fraudulently got the name of the petitioner entered in the Gram Panchayat, as father of that child. The respondent has left the company of the petitioner on 8.4.1991, without the consent of the petitioner and without reasonable cause with the intention to put an end to the matrimonial tie. The respondent is living separately at Palampur. The respondent has deserted the petitioner. The efforts made by the petitioner to reconcile the matter have failed and there is no chance of conciliation.

4. The respondent contested the petition by filing a reply and she took preliminary objections of estoppel and maintainability of the petition. On merits, she has denied the case of the petitioner. It

has been denied that respondent quarreled with the petitioner or his mother. It has been alleged that she had never shown her desire to live separately from joint family. The mother of the respondent never visited the petitioner on 7.4.1991. Therefore, there is no question of abusing petitioner and his mother by the mother of the respondent on that date. It has been denied that respondent levelled allegations of illicit relations of petitioner with Smt. Gurdas Kaur. The inquiry conducted by the Deputy Commissioner has been denied. It has been denied that respondent has kept a male child, on the contrary it has been pleaded that petitioner of his own had taken a child from a distant relation of respondent in the year 1991. The petitioner himself got the entries made in Gram Panchayat, Mant, showing him as father of the child. The respondent stayed in the matrimonial home from January, 1992 to January, 1993, but thereafter petitioner turned her out from the matrimonial home after giving her beatings. The respondent is serving in H.P.KVV, Palampur. The petitioner himself told the respondent that he had relations with Smt. Gurdas Kaur and had children from her. He even handed over a letter written by Navneet Verma addressed to the petitioner, in which petitioner was addressed as father of Navneet Verma. He also handed over a new year card to respondent, which was sent by Navneet Verma to the petitioner. The petitioner has been doubting the character of the respondent. The petitioner and his mother used to level false allegations against the respondent of having illicit relations. The respondent was turned out by petitioner and his mother from matrimonial home on 8.4.1991. In these circumstances, the

respondent has no alternative but to take shelter in the house of her parents.

5. The court below framed the following issues:-

1. Whether the respondent has treated the petitioner with cruelty as alleged, if so, its effect? OPP.

2. Whether the respondent has deserted the petitioner for the last more than two years immediately proceeding to the presentation of the petition? OPP.

3. Whether the petitioner is estopped from filing the present petition as alleged? OPR.

4. Whether the petition is not maintainable? OPR.

5. Relief.

6. The issues No. 1 and 2 were decided in favour of the petitioner and issues No. 3 and 4 against the respondent and consequently the petition has been allowed. In this way, the respondent- wife is in appeal.

7. I have heard the learned counsel for the parties and have also gone through the record.

8. The petitioner Subhash Chand has appeared as PW 1 and has deposed that they were married on 8.12.1989 and lived together till 6.4.1991. The respondent started quarreling with him and his mother after the marriage on the ground that she could not live in joint family. She started misbehaving with his mother. On 7.4.1991, respondent and her mother visited their house and abused him and his mother. She submitted applications in his office. She levelled

allegations that he has illicit relations with Gurdas Kaur. This allegation is false. This has caused mental disturbance to him and he was humiliated in the eyes of his friends and relations. She has also kept illegally one child and got her name entered in Gram Panchayat, Mant as Sumit Verma daughter of Subhash Chand. She has shown that said child was born to her from his loins, whereas, the parties do not have any issue from the marriage. This has been done by the respondent in order to grab his property. He never authorized the respondent to adopt any child. The respondent is residing separately since 8.4.1991. She has left him without his consent. He attempted to bring her back, but he failed. He has given affidavit in the office of Deputy Commissioner. In cross- examination, he has denied that he knew Navneet Verma. He has denied that he turned out the respondent from matrimonial home on 8.4.1991. He has denied that respondent lived with him from January, 1992 to January, 1993. He has denied that in January, 1993, he had given beatings to respondent. He denied having levelled allegations regarding the character of the respondent.

9. PW 2 Kashmir Singh has placed on record letters Ex. PW 2/A dated 21.6.1993, Ex. PW 2/B dated 22.7.1993, Ex. PW 2/C dated 6.1.1995, Ex. PW 2/D dated 12.2.1994 of respondent to Deputy Commissioner, Kangra, Ex. PW 2/E affidavit dated 6.2.1995 of petitioner, Ex. PW 2/F letter dated 22.7.1993 of respondent to Deputy Commissioner, Kangra, Ex.PW2/G letter dated 23.2.1995 of Deputy Commissioner, Kangra to respondent. In cross-examination, he was confronted with writing Ex. R-1, dated 25.6.1991 of petitioner.

10. PW 3 is Prem Lal. He has placed on record Ex. PW 3/A the extract from birth and death register regarding Sumit Verma. PW 4 Harbans Raj is a colleague of the petitioner. He has deposed that respondent had given two applications against the petitioner to Deputy Commissioner, alleging therein that the petitioner has contracted second marriage, whereas the petitioner had not contracted such marriage. On account of this, the petitioner has suffered mental pain. This was false allegation. This allegation was levelled by the respondent in order to defame the petitioner.

11. PW 5 Dev Raj is a neighbour of the petitioner. He has stated that initially the parties were living amicably but later on respondent started quarreling with the petitioner. In April, 1991 respondent came with her mother and quarreled with the petitioner and his parents.

12. PW 6 Ved Parkash is the brother of the petitioner. He has deposed that respondent used to insist the petitioner to live separately. The respondent used to quarrel with their parents. On 7.4.1991, respondent came to their residence alongwith her mother and they quarreled there. She left on 8.4.1991 and thereafter she did not turn up.

13. PW 7 Kamal Sarotri has stated that Sumit Verma was born on 16.12.1991, he was got admitted in the school by her mother Shyam Lata. In the record, his father's name has been shown Subhash Chand. On the admission form of Sumit Verma, signatures of Subhash Chand are not there. She has proved birth certificate Ex. PW 7/A, of Sumit Verma.

14. RW 1 Shyam Lata respondent has stated that she lived with her in-laws till April, 1991. The petitioner after giving beatings turned her out on 8.4.1991. The petitioner has illicit relations with Smt. Gurdas Kaur. She took Sumit Verma in adoption with the consent of the petitioner. Navneet is the daughter of Smt. Gurdas Kaur and she addresses petitioner as "Pappa". She has admitted having written applications/ letters Ex. RW 1/A, Ex,. RW2/A, Ex. PW 2/B, Ex. PW 2/C, Ex. PW 2/D, Ex. PW 2/F, Ex. PW 2/G and Ex. RW 1/B. She has admitted adoption deed was registered on 8.6.1993 and on that date petitioner was not present. She has admitted her signatures on Ex. RW 1/C. She has stated that she took the child first and adoption deed Ex. RW 1/C was executed two years thereafter. She has admitted that child was got admitted in the school by her.

15. RW 2 Tilak Raj is the Secretary of "Tank Swarankar Sabha". He has stated that on 16.1.1992, a letter of Smt. Krishna Devi was received, in which it was stated that petitioner was not treating her daughter properly. He proved the decision, dated 10.7.1994 Ex. RW 2/A of the Sabha.

16. RW 3 Santosh Kumar is the uncle (Mama) of respondent. He has stated that he visited the house of a teacher and inquired about the petitioner. He could not tell what relation that teacher was having with the petitioner.

17. The cruelty has not been defined in the Act. However, in **V. Bhagat vs. D. Bhagat (Mrs) [1994 (1) SCC 337]**, the Hon'ble Supreme Court has held that mental cruelty means that conduct which inflicts upon the other party such mental pain and suffering as

would make it not possible for that party to live with the other. Mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. Regard must be had to the social status, educational level of the parties and the society they move in. In **Shobha Rani vs. Madhukar Reddi [1988 (1) SCC 105]**, it has been held that the term cruelty has been used in Section 13 of the Act in the context of human conduct or behaviour in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty.

18. In the present case, the case of the petitioner regarding cruelty is that immediately after the marriage the respondent started misbehaving with petitioner and his mother on the ground that she could not live in joint family. She and her mother abused and misbehaved the petitioner and his mother and since April, 1991 respondent is not living with the petitioner. She has leveled unsubstantiated allegation of illicit relations of petitioner with Smt. Gurdas Kaur. She has written several letters such as Ex. PW 2/A to Ex. PW 2/G to the Deputy Commissioner, Kangra. In Ex. PW 2/A, she has alleged that petitioner has illicit relations with Smt. Gurdas

Kaur. The allegation of illicit relations of petitioner with Smt. Gurdas Kaur has not at all been proved. The letter dated 17.9.1994 Ex. RW 1/A has been addressed by the respondent to Deputy Commissioner, Kangra, wherein she has again repeated the allegation that petitioner is having illicit relations with Smt. Gurdas Kaur. In that letter, she has further alleged that Ved Parkash, the younger brother of petitioner beats her. The respondent without the consent of petitioner has adopted Sumit Kumar, vide Ex. RW 1/C, and in this document she has stated that her relations with petitioner have been completely broken. PW 4 Harbans Raj has stated that respondent had submitted the application to the Deputy Commissioner alleging that petitioner has contracted second marriage which was factually incorrect, but this has caused mental pain to the petitioner, as this allegation was false. PW 5 Dev Raj has submitted that in April, 1991 respondent and her mother quarreled with the petitioner and his mother and thereafter respondent did not come back. PW 6 Ved Parkash has also stated that on 7.4.1991 Shyam Lata and her mother visited their house and they left the place on 8.4.1991 and thereafter respondent never turned up.

19. The false allegation of illicit relations, misbehaviour with the petitioner and his mother by the respondent, adoption of Sumit Verma without the consent of the petitioner on the ground that relations of the respondent and petitioner have completely broken down, false unsubstantiated complaints to the superior authority of the petitioner are collectively bound to disturb the petitioner seriously which is nothing but mental cruelty. An ordinary person does not

remain unaffected by such false allegations. A normal human being is bound to be disturbed emotionally by such allegations which are not only false but defamatory also. Thus it has been established on record that respondent has treated the petitioner with cruelty. In **Minakshi Mehta vs Atul Mehra [AIR 2000 HP 73]**, it has been held that allegation of illicit relations of husband with a woman made to superiors if not proved amounts to mental cruelty and aggrieved party is entitled to divorce.

20. In **Samar Ghosh vs. Jaya Ghosh [2007 (2) SLJ (SC) 705]**, the Hon'ble Supreme Court in para-97 of the judgement, has held as follows:

> "No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of `mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.
>
> (i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.
>
> (ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.
>
> (iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a

degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it

extremely difficult to live with the other party and longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

21. In the present case, the petitioner by leading cogent evidence has proved on record that the respondent-wife by her long conduct towards petitioner has treated him shabbily. This has caused mental cruelty to the petitioner. The learned District Judge has appreciated the material on record in right perspective and has rightly concluded that the respondent has treated the petitioner with cruelty. The respondent has failed to make out any case for

interference regarding the finding recorded by the court below on issue No.1 of cruelty which is affirmed.

22. As per explanation to sub-section (1) of Section 13, the expression “desertion” means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage. In the present case, it has been established on record that since April, 1991, the respondent is not living with the petitioner, rather she is residing in her parents house. It is for the respondent to prove reasonable cause for living separately. The respondent has alleged that petitioner has maltreated her, but she has miserably failed to substantiate these allegations. On the contrary, it has come on record that without the consent of the petitioner, she has adopted a child through Ex. RW 1/C, wherein she has admitted that her relations with the petitioner have completely broken down. In other words, the respondent has now no intention to live with the petitioner in his matrimonial home. In the present case, factum of desertion and intention of the respondent to break the matrimonial tie permanently has been established by the long conduct of the respondent to live separately without any just and reasonable cause. The respondent has deserted the petitioner without any reasonable cause since April, 1991. The court below has rightly appreciated the evidence on record and has correctly recorded the finding that respondent has deserted the petitioner, which finding is affirmed.

23. It is a fact that parties are not living together since April, 1991. There is no issue from the marriage. The parties are living separately for the last about sixteen years. Now there is no hope of their living together. The marriage has completely broken down. There is irretrievable break down of the marriage which is a relevant factor to be taken into consideration, though not a ground of divorce under the Act.

24. In **A. Jayachandra vs. Aneel Kaur [2005 (2) SCC 22],** the Hon'ble Supreme Court, in para-17 of the judgement, has held as follows:-

> "……..It is true that irretrievable breaking of marriage is not one of the statutory grounds on which court can direct dissolution of marriage, this Court has with a view to do complete justice and shorten the agony of the parties engaged in long-drawn legal battle, directed in those cases dissolution of marriage. But as noted in the said cases themselves, those were exceptional cases."

25. In **Samar Ghosh's case** (supra), the Hon'ble Supreme Court in para-91 of the judgement, has held as follows:-

> "Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties."

26. In view of above discussion, the appeal is dismissed. The impugned judgement and decree are upheld. No costs.

May 29, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**